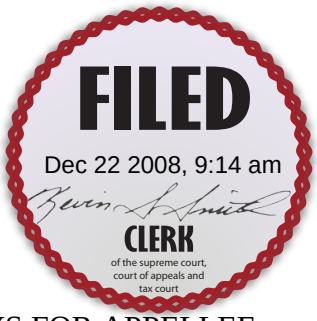

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IN THE
COURT OF APPEALS OF INDIANA

RONALD PRICE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 76A03-0805-CR-248
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE STEUBEN SUPERIOR COURT
The Honorable William C. Fee, Judge
Cause No. 76D01-0708-FC-910

December 22, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Ronald Price appeals his twelve-year sentence imposed following his guilty plea to two counts of class C felony burglary,[1] arguing that his sentence is illegal and that the trial court erred in failing to consider suspending part of his sentence. We affirm.

Sometime during the late evening hours of August 12, 2007, and the early morning hours of August 13, 2007, Cassie Green was driving a vehicle in which Arthur and Shannon Marler and Price were passengers. At Baker's Acres in Angola, Price told Green to stop, and he and Arthur got out of the car. Price broke into Baker's Acres, and he and Arthur took $450.00, two-way radios, and a laptop computer.

Thereafter, Donald Studebaker joined the group. Green drove to Jim Murdock's "pole building." Appellant's App. at 57. Price, Arthur, and Studebaker got out of the car and went to the building, and Price broke into the building. They took Murdock's mini-bike.

On August 14, 2007, the State charged Price with class C felony burglary of the pole building. On September 11, 2007, the State charged Price with class C felony burglary of Baker's Acres and with being a habitual offender.

On December 10, 2007, Price and the State entered into a plea agreement, which provided for Price to plead guilty to two counts of class C felony burglary and "[a] term of imprisonment of [] 6 years each count–consecutive or concurrent." *Id*. at 13. The terms of the plea agreement that would have permitted a portion of the sentence to be suspended were lined out. *Id*. The State agreed to dismiss the habitual offender count. On May 5, 2008, the

[1] *See* Ind. Code § 35-43-2-1.

trial court sentenced Price to six years' imprisonment on each burglary count, to be served consecutively.

On appeal, Price asserts that his twelve-year sentence exceeds the maximum sentence permitted pursuant to Indiana Code Section 35-50-1-2 because his offenses are part of a single episode of criminal conduct. Indiana Code Section 35-50-1-2 provides that "except for crimes of violence, the total of the consecutive terms of imprisonment … to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted." He also asserts that the trial court erred in failing to consider whether to suspend part of his sentence. Due to the terms of his plea agreement, Price is unable to maintain either claim.

As to whether Price's sentence is illegal pursuant to Indiana Code Section 35-50-1-2, we need not make this determination because even if his sentence were illegal, Price agreed to the possibility of consecutive sentences pursuant to the plea agreement.[2] We observe that "[p]lea agreements are contracts which are entered into between the State and defendant and are binding upon both parties when accepted by the trial court." *Baker v. State*, 768 N.E.2d 477, 481 (Ind. Ct. App. 2002). "Once a trial court accepts a plea agreement, it is bound by its terms." *Id*. Further, a defendant "'may not enter a plea agreement calling for an illegal sentence, benefit from that sentence, and then later complain that it was an illegal sentence.'"

[2] Here, as the State points out, "the facts of the two burglary counts are somewhat hazy because the record is sparse as to the timing of the offenses." Appellee's Br. at 9. Therefore, given the record before us, it would be difficult to conclusively determine whether Price's offenses constituted a single episode of criminal conduct.

Lee v. State, 816 N.E.2d 35, 40 (Ind. 2004) (quoting *Collins v. State*, 509 N.E.2d 827, 833 (Ind. 1987). "'[D]efendants who plead guilty to achieve favorable outcomes give up a plethora of substantive claims and procedural rights, such as challenges to convictions that would otherwise constitute double jeopardy.'" *Id.* (quoting *Davis v. State*, 771 N.E.2d 647, 649 n.4 (Ind. 2002).

Here, in exchange for pleading guilty to two counts of class C felony burglary, the State agreed to dismiss the habitual offender charge, the conviction of which would have exposed Price to a sentence enhancement of between four to twelve years. *See* Ind. Code § 35-50-2-8(h). The State also agreed to cap the sentence for each burglary count to six years, whereas the maximum sentence for a class C felony is eight years. *See* Ind. Code § 35-50-2-6(a). Without the plea agreement, and assuming that only concurrent sentences were possible in this case, Price could have been sentenced to up to twenty years' imprisonment. Thus, Price received a significant benefit from his plea agreement and cannot now complain that his sentence is illegal. *See Lee*, 816 N.E.2d at 39-40 (affirming illegal sentence pursuant to plea agreement where plea permitted defendant to reduce penal exposure by thirty years); *see also Stites v. State*, 829 N.E.2d 527, 529 (Ind. 2005) (holding that defendant could not complain that consecutive sentences were illegal where she received less than sixty-year maximum possible sentence and State agreed not to seek death penalty).

We also reject Price's argument that, assuming without deciding, his sentence is illegal, the provision in the plea agreement permitting consecutive sentences should be severed. In *Lee*, the court noted that "[u]nder some circumstances, the appropriate remedy to

address an illegal sentence … is to sever the illegal sentencing provision from the plea agreement, and remand the cause to the trial court with instructions to enter an order running the sentences concurrently." 816 N.E.2d at 40. However, because Lee received a significant benefit from pleading guilty, the supreme court concluded that Lee's case was not one for which severance was appropriate. For the same reason, Price is not entitled to severance.

Turning now to Price's claim that the trial court improperly failed to consider suspending part of his sentence, we observe that pursuant to the plea agreement he agreed to "imprisonment of six years" for each burglary count. Appellant's App. at 13. Therefore, the trial court had no option but to impose six years' imprisonment. *See Baker*, 768 N.E.2d at 481. Accordingly, we affirm Price's sentence.

Affirmed.

ROBB, J., and BROWN, J., concur.